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SENSITIVE

STATE FOR D (FRITZ), EAP/FO, AND EAP/ANP
NSC FOR VICTOR CHA
SECDEF FOR OSD/ISD LIZ PHU
PACOM FOR J01E/J2/J233/J5/SJFHQ

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SUBJECT: FIRST PROSECUTION FOR SEDITION IN NEW ZEALAND IN 75 YEARS
SETS OFF DEBATE OVER THE LAW'S UTILITY.

11. (SBU) Summary: For the first time in nearly three quarters of a century, a New Zealander has been found guilty of sedition. Cases of sedition are extremely rare in New Zealand, with convictions rarer still. The exceptional nature of the charge has helped generated a good deal attention over whether there is still a place for the charge of sedition in modern New Zealand society. Some legal scholars have raised the question whether the legal standard for seditious actions in New Zealand is set too low and have cited the United States as having a more reasonable benchmark for the offense.

Trial details

12. (SBU) Timothy Selwyn, 31, was charged with two counts of sedition and found guilty on one count for publishing seditious statements. The publishing charge refers to leaflets found within three miles of Prime Minister Helen Clark's electorate office in Auckland on November 18, 2004. They were found after Selwyn planted an axe in office's window during the height of the debate over the controversial foreshore and seabed legislation.

13. (SBU) A statement by Selwyn found within the leaflet called upon "all like-minded New Zealanders to take similar action" to his axe attack. The Crown argued that the statement was seditious as it pointedly encouraged other New Zealanders to break the law through similar crimes. For his part, Selwyn said the jury had "criminalized a press statement" and that he planned to appeal. He is currently free on bail pending sentencing next month
The debate

14. (SBU) The case has drawn considerable controversy within New Zealand. Many believe that New Zealand's sedition laws are a relic from another age, morally abhorrent and a clear-cut abuse of the right to freedom of speech. Civil libertarians have urged a review of the sedition laws. They argue that the laws' broad ranging applications potentially create an undue restraint on public debate of politically controversial matters. Selwyn is expected to use this line of argument as the basis for his appeal. Proponents of the existing laws argue that free speech can transcend into incitement of violence, and there will always be a need to enforce laws against that.

15. (SBU) The left-wing Green party has called for a review of the laws, arguing that they suppress political dissent and have no place in a modern society. But the Government clearly disagrees. At the time Selwyn's attack on her office, Prime Minister Clark said "This

is violent criminal behaviour and there is no place for it in a democracy".
Legal argument centers on the strength of the legal yardstick.

16. (SBU) As a result of this trial, some legal experts have observed that the legal benchmark for sedition in New Zealand may be set too low compared to the more demanding benchmark in United States constitutional law. Under the New Zealand Crimes Act 1961, sedition is defined as "speech, writing or behaviour intended to encourage rebellion or resistance against the government". Selwyn was charged under section 81(1) (c) of the Act, which forbids any such publication meant "[t]o incite, procure, or encourage violence, lawlessness, or disorder". The New Zealand Police entered the leaflet as evidence of seditious material.

McCormick